IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.362 OF 2005

Messrs Jakoven Industries. ...Petitioner.

Vs.

Municipal Corporation of Greater Bombay & Ors. ...Respondents.

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Mr.G.V.Murti i/b. M/s.Niranjan & Co. for the Petitioner.

Mrs.A.R.Joshi for the Respondents.

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CORAM : DR.D.Y.CHANDRACHUD, J.

February 22, 2005.

P.C. :

Rule, returnable forthwith. Learned Counsel appearing on behalf of the Respondents waives service. By consent taken up for hearing and final disposal.

The Petitioner claims to have acquired a plot of land bearing No.7, K.Mahadeo Compound,

Datta Mandir Road, Bhandup (West), Mumbai-400 078 as a lessee under a registered Deed of Lease dated 11th May 1967. A factory shed was constructed thereon with the sanction of the Municipal Corporation and the completion certificate is stated to have been issued on 17th May 1967. On 1st October 1967, the factory shed was assessed to property tax under the Assessment No.SN-2596(1B). According to the Petitioner, all the bills on account of property taxes were paid until the period 1st April 2002 - 30th September 2002. The rateable value for the purpose of assessment was fixed at Rs.8380/-. In 2002, the Petitioner commenced developmental activities on the property for residential construction. The Municipal Corporation issued an IOD on 17th April 2002 and the commencement certificate on 30th October 2002. For the billing cycle for the period 1st April 2002 till 30th September 2002, the property was taxed as a factory building on the rateable value of Rs.8,380/-.

On 11th March 2003, a special notice was issued under Section 167 of the Mumbai Municipal Corporation Act, 1888, by the Assessor and Collector by which the rateable value was sought to be enhanced to Rs.4,64,570/- with effect from 1st

April 2002. The property was sought to be classified in the special notice as LBBU (Land Being Built Upon). A similar notice was also issued under Section 162(2) to the effect that the rateable value has been fixed at Rs.4,64,570/- for the year 2003-04 on the basis that the land was being built upon. By another set of notices under Section 167 and Section 162(2) respectively, also dated 11th March 2003, a portion of the property was sought to be bifurcated with Assessment No.S-2596(1BB) and the rateable value of Rs.3280/- was sought to be fixed. This part of the property was bifurcated on the ground that it was shown for a recreation ground and for a D.P.Road.

The Petitioners lodged a complaint before the Assessor and Collector. The Corporation issued bills on account of the arrears of property tax for the period 1st April 2002 to 30th September 2002 on the basis of the rateable value of Rs.4,64,570/-. This was for the same period for which earlier, the rateable value was determined at Rs.8,380/-. On 14th October 2004, the Petitioners requested the Assistant Assessor and Collector to supply a copy of the Tabulated Ward Report. This was not furnished. Penalty notices were issued by the Municipal Corporation on 23rd November 2004.

The grievance of the Petitioners is that the whole basis of enhancement in the assessment is contrary to the law laid down by the Supreme Court in **The Municipal Corporation of Greater Bombay v. M/s.Polychem Ltd.**, AIR 1974 SC 1779. There is merit in the submission of the Petitioners. The judgment of the Supreme Court is an authority for the proposition that so long as a building is not completed or constructed to such an extent that at least a partial completion notice can be given so that the completed portion can be occupied and let, the land can, for purpose of rating, be equated with or treated as vacant land. It is only when the building is in such a state that it is actually and legally capable of occupation that the letting value of the building can be taken into account for the purposes of rating. Despite this clear position in law, the Municipal Corporation, as this Court has found in repeated instances, insists on classifying lands which are being built upon as LUC (land under construction) or, as in the present case, as LBBU, (Land Being Built Upon). The Court is constrained to take serious note of the conduct of the Assistant Assessor and Collector and the officials of the Department. Despite the clear position of law laid down by the Supreme Court,

this Court is repeatedly called upon to deal with petitions in which the same illegality is persisted with by the Municipal Corporation.

In the present case, for the reasons furnished hereinabove, the Petitioners are entitled to succeed. The bills and penalty orders respectively at Exhibits G1 to G5, H1 to H5 and K1 to K5 of the Petition are quashed and set aside. The Fourth Respondent is directed to recompute the rateable value in accordance with law, after furnishing an opportunity to the Petitioners of being heard. The Petition is accordingly disposed of. No order as to costs.

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